

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

LESLIE F. LAMBERT, JR.,

Plaintiff,

vs.

MONTANA STATE PRISON,

Defendant.

CV 17-00052-H-DLC-JTJ

ORDER

Plaintiff Leslie Lambert, a prisoner proceeding without counsel, filed a Complaint which the Court screened pursuant to 28 U.S.C. §§ 1915, 1915A and determined that it failed to state a claim upon which relief could be granted and as such it was subject to dismissal. (Doc. 5.) Mr. Lambert was given information on potential claims and an opportunity to file an amended complaint. (Doc. 5.) He moved for and was granted an extension to file an amended complaint on or before August 23, 2017. (Docs. 7, 8). Mr. Lambert filed a notice of change of address on August 24, 2017 but has not filed an amended complaint.

Accordingly, for the reasons set forth in the Court's June 21, 2017 Order (Doc. 5), the Court finds that Mr. Lambert failed to state a federal claim upon

which relief may be granted and issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Green failed to state a claim upon which relief may be granted.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Lambert may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under

to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 19th day of September, 2017.

/s/ John Johnston
John Johnston
United States Magistrate Judge

Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a)." Therefore, since Mr. Lambert is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.